

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Rodney Moucell Jones, #185922,)	C/A No. 0:06-3362-JFA-BM
)	
Petitioner,)	
v.)	ORDER
)	
Warden of Kershaw Correctional Institution,)	
)	
Respondent.)	
_____)	

This matter is before the court for review of the Magistrate Judge's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The *pro se* petitioner, Rodney Moucell Jones, is an inmate with the South Carolina Department of Corrections at the Kershaw Correctional Institution. He has filed this petition

under 28 U.S.C. § 2254 seeking reversal of his underlying state conviction and sentence and requests that this court grant him a belated appeal of the revocation of his state probation.

The petitioner, Mr. Jones, pled guilty in 2001 to a state charge of assault and battery of a high and aggravated nature. He was sentenced to 10 years imprisonment, suspended upon service of 1 year, and 42 months probation. On June 13, 2002, his probation was revoked. Petitioner attests that he appealed the revocation and that it was dismissed by the Supreme Court of South Carolina.

The Magistrate Judge suggests that the petition is successive and recommends that this action be dismissed without prejudice because the petitioner has not obtained a pre-filing authorization for the Fourth Circuit Court of Appeals. As the Magistrate Judge notes, the petitioner has filed a previous habeas petition in this court with respect to the 2001 conviction and probation revocation.¹ That petition was dismissed as time-barred and the Fourth Circuit Court of Appeals affirmed this court's order of dismissal.

As to the present petition, the petitioner was advised of his right to file objections to the Report and Recommendation. Within the time limits prescribed by the Local Rules, the petitioner filed a 7-page objection memorandum with various state court pleading attached. The court has reviewed, *de novo*, the Report and the objections thereto and finds that there is no basis for disturbing the Magistrate Judge's recommended disposition.

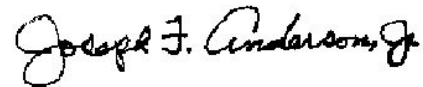
Under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") and

¹ See *Jones v. State of South Carolina*, C/A No. 0:05-865-JFA-BM (D.S.C. Nov. 15, 2005).

28 U.S.C. § 2244(b)(3)(A), a prospective applicant must file in the court of appeals a motion for leave to file a second or successive habeas application in the district court. It appears from the record before this court, that the petitioner has failed to obtain prior authorization from the Fourth Circuit Court of Appeals. Accordingly, this court does not have the appropriate jurisdiction to consider the petition.

For the foregoing reasons, the objections are overruled; the Report and Recommendation is incorporated herein by reference; and this action is hereby dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

April 10, 2007
Columbia, South Carolina